
HOUSE BILL 1062

State of Washington

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By Representatives O'Brien, Ballasiotes, Delvin, Lovick and Haigh; by request of Criminal Justice Training Commission

Read first time 01/15/2001. Referred to Committee on Criminal Justice & Corrections.

1 AN ACT Relating to certification of peace officers; amending RCW
2 43.101.010; adding new sections to chapter 43.101 RCW; and providing an
3 effective date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 43.101.010 and 1981 c 132 s 2 are each amended to read
6 as follows:

7 When used in this chapter:

8 (1) The term "commission" means the Washington state criminal
9 justice training commission.

10 (2) The term "boards" means the education and training standards
11 boards, the establishment of which are authorized by this chapter.

12 (3) The term "criminal justice personnel" means any person who
13 serves in a county, city, state, or port commission agency engaged in
14 crime prevention, crime reduction, or enforcement of the criminal law.

15 (4) The term "law enforcement personnel" means any public employee
16 or volunteer having as a primary function the enforcement of criminal
17 laws in general or any employee or volunteer of, or any individual
18 commissioned by, any municipal, county, state, or combination thereof,
19 agency having as its primary function the enforcement of criminal laws

1 in general as distinguished from an agency possessing peace officer
2 powers, the primary function of which is the implementation of
3 specialized subject matter areas. For the purposes of this subsection
4 "primary function" means that function to which the greater allocation
5 of resources is made.

6 (5) The term "correctional personnel" means any employee or
7 volunteer who by state, county, municipal, or combination thereof,
8 statute has the responsibility for the confinement, care, management,
9 training, treatment, education, supervision, or counseling of those
10 individuals whose civil rights have been limited in some way by legal
11 sanction.

12 (6) A peace officer is "convicted" at the time a plea of guilty has
13 been accepted, or a verdict of guilty or finding of guilt has been
14 filed, notwithstanding the pendency of any future proceedings,
15 including but not limited to sentencing, posttrial or postfact-finding
16 motions and appeals. "Conviction" includes a deferral of sentence and
17 also includes the equivalent disposition by a court in a jurisdiction
18 other than the state of Washington.

19 (7) "Discharged for disqualifying misconduct" means terminated from
20 employment for: (a) Conviction of (i) any crime committed under color
21 of authority as a peace officer, (ii) any crime involving dishonesty or
22 false statement within the meaning of Evidence Rule 609(a), (iii) the
23 unlawful use or possession of a controlled substance, or (iv) any other
24 crime the conviction of which disqualifies a Washington citizen from
25 the legal right to possess a firearm under state or federal law; (b)
26 conduct that would constitute any of the crimes addressed in (a) of
27 this subsection; or (c) knowingly making materially false statements
28 during disciplinary investigations, where the false statements are the
29 sole basis for the termination.

30 (8) A peace officer is "discharged for disqualifying misconduct"
31 within the meaning of subsection (7) of this section under the ordinary
32 meaning of the term and when the totality of the circumstances support
33 a finding that the officer resigned in anticipation of discipline,
34 whether or not the misconduct was discovered at the time of
35 resignation, and when such discipline, if carried forward, would more
36 likely than not have led to discharge for disqualifying misconduct
37 within the meaning of subsection (7) of this section.

38 (9) When used in context of proceedings referred to in this
39 chapter, "final" means that the peace officer has exhausted all

1 available civil service appeals, collective bargaining remedies, and
2 all other such direct administrative appeals, and the officer has not
3 been reinstated as the result of the action. Finality is not affected
4 by the pendency or availability of state or federal administrative or
5 court actions for discrimination, or by the pendency or availability of
6 any remedies other than direct civil service and collective bargaining
7 remedies.

8 (10) "Peace officer" means any law enforcement personnel subject to
9 the basic law enforcement training requirement of RCW 43.101.200 and
10 any other requirements of that section, notwithstanding any waiver or
11 exemption granted by the commission, and notwithstanding the statutory
12 exemption based on date of initial hire under RCW 43.101.200.
13 Commissioned officers of the Washington state patrol, whether they have
14 been or may be exempted by rule of the commission from the basic
15 training requirement of RCW 43.101.200, are included as peace officers
16 for purposes of this chapter. Fish and wildlife officers with
17 enforcement powers for all criminal laws under RCW 77.12.055 are peace
18 officers for purposes of this chapter.

19 NEW SECTION. Sec. 2. (1) As a condition of continuing employment
20 as peace officers, all Washington peace officers: (a) Shall timely
21 obtain certification as peace officers, or timely obtain certification
22 for exemption therefrom, by meeting all requirements of RCW 43.101.200,
23 as that section is administered under the rules of the commission, as
24 well by meeting any additional requirements under this chapter; and (b)
25 shall maintain the basic certification as peace officers under this
26 chapter. The commission shall certify peace officers who have
27 satisfied, or have been exempted by statute or by rule from, the basic
28 training requirements of RCW 43.101.200 on or before the effective date
29 of this section. Thereafter, the commission may revoke certification
30 pursuant to this chapter.

31 (2) The commission shall allow a peace officer to retain status as
32 a certified peace officer as long as the officer: (a) Timely meets the
33 basic law enforcement training requirements, or is exempted therefrom,
34 in whole or in part, under RCW 43.101.200 or under rule of the
35 commission; (b) meets or is exempted from any other requirements under
36 this chapter as administered under the rules adopted by the commission;
37 (c) is not denied certification by the commission under this chapter;
38 and (d) has not had certification revoked by the commission.

1 (3) As a prerequisite to certification, as well as a prerequisite
2 to pursuit of a hearing under section 9 of this act, a peace officer
3 must, on a form devised or adopted by the commission, authorize the
4 release to the commission of his or her personnel files, termination
5 papers, criminal investigation files, or other files, papers, or
6 information that are directly related to a certification matter or
7 decertification matter before the commission.

8 NEW SECTION. **Sec. 3.** Upon request by a peace officer's employer
9 or on its own initiative, the commission may deny or revoke
10 certification of any peace officer, after written notice and hearing,
11 if a hearing is timely requested by the peace officer under section 9
12 of this act, based upon a finding of one or more of the following
13 conditions:

14 (1) The peace officer has failed to timely meet all requirements
15 for obtaining a certificate of basic law enforcement training, a
16 certificate of basic law enforcement training equivalency, or a
17 certificate of exemption from the training;

18 (2) The peace officer has knowingly falsified or omitted material
19 information on an application for training or certification to the
20 commission;

21 (3) The peace officer has been convicted at any time of a felony
22 offense under the laws of this state or has been convicted of a federal
23 or out-of-state offense comparable to a felony under the laws of this
24 state;

25 (4) The peace officer has been discharged for disqualifying
26 misconduct, the discharge is final, and some or all of the acts or
27 omissions forming the basis for the discharge proceedings occurred on
28 or after the effective date of this section;

29 (5) The peace officer's certificate was previously issued by
30 administrative error on the part of the commission; or

31 (6) The peace officer has interfered with an investigation or
32 action for denial or revocation of certificate by: (a) Knowingly
33 making a materially false statement to the commission; or (b) in any
34 matter under investigation by or otherwise before the commission,
35 tampering with evidence or tampering with or intimidating any witness.

36 NEW SECTION. **Sec. 4.** (1) A person denied a certification based
37 upon dismissal or withdrawal from a basic law enforcement academy for

1 any reason not also involving discharge for disqualifying misconduct is
2 eligible for readmission and certification upon meeting standards
3 established in rules of the commission, which rules may provide for
4 probationary terms on readmission.

5 (2) A person whose certification is denied or revoked based upon
6 prior administrative error of issuance, failure to cooperate, or
7 interference with an investigation is eligible for certification upon
8 meeting standards established in rules of the commission, rules which
9 may provide for a probationary period of certification in the event of
10 reinstatement of eligibility.

11 (3) A person whose certification is denied or revoked based upon a
12 felony criminal conviction is not eligible for certification at any
13 time.

14 (4) A peace officer whose certification is denied or revoked based
15 upon discharge for disqualifying misconduct, but not also based upon a
16 felony criminal conviction, may, five years after the revocation or
17 denial, petition the commission for reinstatement of the certificate or
18 for eligibility for reinstatement. The commission shall hold a hearing
19 on the petition to consider reinstatement, and the commission may allow
20 reinstatement based upon standards established in rules of the
21 commission. If the certificate is reinstated or eligibility for
22 certification is determined, the commission may establish a
23 probationary period of certification.

24 (5) A peace officer whose certification is revoked based solely
25 upon a criminal conviction may petition the commission for
26 reinstatement immediately upon a final judicial reversal of the
27 conviction. The commission shall hold a hearing on request to consider
28 reinstatement, and the commission may allow reinstatement based on
29 standards established in rules of the commission. If the certificate
30 is reinstated or if eligibility for certification is determined, the
31 commission may establish a probationary period of certification.

32 NEW SECTION. **Sec. 5.** A peace officer's certification lapses
33 automatically when there is a break of more than twenty-four
34 consecutive months in the officer's service as a full-time law
35 enforcement officer. A break in full-time law enforcement service
36 which is due solely to the pendency of direct review or appeal from a
37 disciplinary discharge, or to the pendency of a work-related injury,
38 does not cause a lapse in certification. The officer may petition the

1 commission for reinstatement of certification. Upon receipt of a
2 petition for reinstatement of a lapsed certificate, the commission
3 shall determine under this chapter and any applicable rules of the
4 commission if the peace officer's certification status is to be
5 reinstated, and the commission shall also determine any requirements
6 which the officer must meet for reinstatement. The commission may adopt
7 rules establishing requirements for reinstatement.

8 NEW SECTION. **Sec. 6.** Upon termination of a peace officer for any
9 reason, including resignation, the agency of termination shall, within
10 fifteen days of the termination, notify the commission on a personnel
11 action report form provided by the commission. The agency of
12 termination shall, upon request of the commission, provide such
13 additional documentation or information as the commission deems
14 necessary to determine whether the termination provides grounds for
15 revocation under section 3 of this act. The commission shall maintain
16 these notices in a permanent file, subject to section 12 of this act.

17 NEW SECTION. **Sec. 7.** In addition to its other powers granted
18 under this chapter, the commission has authority and power to:

19 (1) Adopt, amend, or repeal rules as necessary to carry out this
20 chapter;

21 (2) Issue subpoenas and administer oaths in connection with
22 investigations, hearings, or other proceedings held under this chapter;

23 (3) Take or cause to be taken depositions and other discovery
24 procedures as needed in investigations, hearings, and other proceedings
25 held under this chapter;

26 (4) Appoint members of a hearings board as provided under section
27 10 of this act;

28 (5) Enter into contracts for professional services determined by
29 the commission to be necessary for adequate enforcement of this
30 chapter;

31 (6) Grant, deny, or revoke certification of peace officers under
32 the provisions of this chapter;

33 (7) Designate individuals authorized to sign subpoenas and
34 statements of charges under the provisions of this chapter; and

35 (8) Employ such investigative, administrative, and clerical staff
36 as necessary for the enforcement of this chapter.

1 NEW SECTION. **Sec. 8.** A law enforcement officer or duly authorized
2 representative of a law enforcement agency may submit a written
3 complaint to the commission charging that a peace officer's certificate
4 should be denied or revoked, and specifying the grounds for the charge.
5 Filing a complaint does not make a complainant a party to the
6 commission's action. The commission has sole discretion whether to
7 investigate a complaint, and the commission has sole discretion whether
8 to investigate matters relating to certification, denial of
9 certification, or revocation of certification on any other basis,
10 without restriction as to the source or the existence of a complaint.
11 A person who files a complaint in good faith under this section is
12 immune from suit or any civil action related to the filing or the
13 contents of the complaint.

14 NEW SECTION. **Sec. 9.** (1) If the commission determines, upon
15 investigation, that there is probable cause to believe that a peace
16 officer's certification should be denied or revoked under section 3 of
17 this act, the commission must prepare and serve upon the officer a
18 statement of charges. Service on the officer must be by mail or by
19 personal service on the officer. Notice of the charges must also be
20 mailed to or otherwise served upon the officer's agency of termination
21 and any current law enforcement agency employer. The statement of
22 charges must be accompanied by a notice that to receive a hearing on
23 the denial or revocation, the officer must, within sixty days of
24 communication of the statement of charges, request a hearing before the
25 hearings board appointed under section 10 of this act. Failure of the
26 officer to request a hearing within the sixty-day period constitutes a
27 default, whereupon the commission may enter an order under RCW
28 34.05.440.

29 (2) If a hearing is requested, the date of the hearing must be
30 scheduled not earlier than ninety days nor later than one hundred
31 eighty days after communication of the statement of charges to the
32 officer; the one hundred eighty day period may be extended on mutual
33 agreement of the parties or for good cause. The commission shall give
34 written notice of hearing at least twenty days prior to the hearing,
35 specifying the time, date, and place of hearing.

36 NEW SECTION. **Sec. 10.** (1) The procedures governing adjudicative
37 proceedings before agencies under chapter 34.05 RCW, the administrative

1 procedure act, govern hearings before the commission and govern all
2 other actions before the commission unless otherwise provided in this
3 chapter. The standard of proof in actions before the commission is
4 clear, cogent, and convincing evidence.

5 (2) On all appeals brought under section 9 of this act, a five-
6 member hearings panel shall both hear the case and make the
7 commission's final administrative decision. Members of the commission
8 or the board on law enforcement training standards and education may
9 but need not be appointed to the hearings panels. The commission shall
10 appoint as follows two or more panels to hear appeals from
11 decertification actions:

12 (a) When an appeal is filed in relation to decertification of a
13 Washington peace officer who is not a peace officer of the Washington
14 state patrol, the commission shall appoint to the panel: (i) One
15 police chief; (ii) one sheriff; (iii) two peace officers who are at or
16 below the level of first line supervisor, who are from city or county
17 law enforcement agencies, and who have at least ten years' experience
18 as peace officers; and (iv) one person who is not currently a peace
19 officer and who represents a community college or four-year college or
20 university.

21 (b) When an appeal is filed in relation to decertification of a
22 peace officer of the Washington state patrol, the commission shall
23 appoint to the panel: (i) Either one police chief or one sheriff; (ii)
24 one administrator of the state patrol; (iii) one peace officer who is
25 at or below the level of first line supervisor, who is from a city or
26 county law enforcement agency, and who has at least ten years'
27 experience as a peace officer; (iv) one state patrol officer who is at
28 or below the level of first line supervisor, and who has at least ten
29 years' experience as a peace officer; and (v) one person who is not
30 currently a peace officer and who represents a community college or
31 four-year college or university.

32 (c) Persons appointed to hearings panels by the commission shall,
33 in relation to any decertification matter on which they sit, have the
34 powers, duties, and immunities, and are entitled to the emoluments,
35 including travel expenses in accordance with RCW 43.03.050 and
36 43.03.060, of regular commission members.

37 (3) Where the charge upon which revocation or denial is based is
38 that a peace officer was "discharged for disqualifying misconduct," and
39 the discharge is "final," within the meaning of section 3(4) of this

1 act, and the officer received a civil service hearing or arbitration
2 hearing culminating in an affirming decision following separation from
3 service by the employer, the hearings panel may revoke or deny
4 certification if the hearings panel determines that the discharge
5 occurred and was based on disqualifying misconduct; the hearings panel
6 need not redetermine the underlying facts but may make this
7 determination based solely on review of the records and decision
8 relating to the employment separation proceeding. However, the
9 hearings panel may, in its discretion, consider additional evidence to
10 determine whether such a discharge occurred and was based on such
11 disqualifying misconduct. The hearings panel shall, upon written
12 request by the subject peace officer, allow the peace officer to
13 present additional evidence of extenuating circumstances.

14 Where the charge upon which revocation or denial of certification
15 is based is that a peace officer "has been convicted at any time of a
16 felony offense" within the meaning of section 3(3) of this act, the
17 hearings panel shall revoke or deny certification if it determines that
18 the peace officer was convicted of a felony. The hearings panel need
19 not redetermine the underlying facts but may make this determination
20 based solely on review of the records and decision relating to the
21 criminal proceeding. However, the hearings panel shall, upon the
22 panel's determination of relevancy, consider additional evidence to
23 determine whether the peace officer was convicted of a felony.

24 Where the charge upon which revocation or denial is based is under
25 section 3(1), (2), (5), or (6) of this act, the hearings panel shall
26 determine the underlying facts relating to the charge upon which
27 revocation or denial of certification is based.

28 (4) The commission's final administrative decision is subject to
29 judicial review under RCW 34.05.510 through 34.05.598.

30 NEW SECTION. **Sec. 11.** The commission, its boards, and individuals
31 acting on behalf of the commission and its boards are immune from suit
32 in any civil or criminal action contesting or based upon proceedings or
33 other official acts performed in the course of their duties in the
34 administration and enforcement of this chapter.

35 NEW SECTION. **Sec. 12.** (1) Except as provided under subsection (2)
36 of this section, the following records of the commission are
37 confidential and exempt from public disclosure: (a) The contents of

1 personnel action reports filed under section 6 of this act; (b) all
2 files, papers, and other information obtained by the commission
3 pursuant to section 2(3) of this act; and (c) all investigative files
4 of the commission compiled in carrying out the responsibilities of the
5 commission under this chapter. Such records are not subject to public
6 disclosure, subpoena, or discovery proceedings in any civil action,
7 except as provided in subsection (5) of this section.

8 (2) Records which are otherwise confidential and exempt under
9 subsection (1) of this section may be reviewed and copied: (a) By the
10 officer involved or the officer's counsel or authorized representative,
11 who may review the officer's file and may submit any additional
12 exculpatory or explanatory evidence, statements, or other information,
13 any of which must be included in the file; (b) by a duly authorized
14 representative of (i) the agency of termination, or (ii) a current
15 employing law enforcement agency, which may review and copy its
16 employee-officer's file; or (c) by a representative of or investigator
17 for the commission.

18 (3) Records which are otherwise confidential and exempt under
19 subsection (1) of this section may also be inspected at the offices of
20 the commission by a duly authorized representative of a law enforcement
21 agency considering an application for employment by a person who is the
22 subject of a record. A copy of records which are otherwise
23 confidential and exempt under subsection (1) of this section may later
24 be obtained by an agency after it hires the applicant. In all other
25 cases under this subsection, the agency may not obtain a copy of the
26 record.

27 (4) Upon a determination that a complaint is without merit, that a
28 personnel action report filed under section 6 of this act does not
29 merit action by the commission, or that a matter otherwise investigated
30 by the commission does not merit action, the commission shall purge
31 records addressed in subsection (1) of this section.

32 (5) The hearings, but not the deliberations, of the hearings board
33 are open to the public. The transcripts, admitted evidence, and
34 written decisions of the hearings board on behalf of the commission are
35 not confidential or exempt from public disclosure, and are subject to
36 subpoena and discovery proceedings in civil actions.

37 (6) Every individual, legal entity, and agency of federal, state,
38 or local government is immune from civil liability, whether direct or
39 derivative, for providing information to the commission in good faith.

1 NEW SECTION. **Sec. 13.** Sections 2 through 12 and 14 of this act
2 are each added to chapter 43.101 RCW.

3 NEW SECTION. **Sec. 14.** This act takes effect January 1, 2002.

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